

JONATHON N. AMLUNG
ATTORNEY AT LAW
1000 REPUBLIC BUILDING
429 W. MUHAMMAD ALI BLVD.
LOUISVILLE, KENTUCKY 40202-2347

RECEIVED

APR 30 2004

PUBLIC SERVICE
COMMISSION
TELEPHONE: (502) 587-6838
FACSIMILE: (502) 584-0439
E-MAIL: jonathon@amlung.com

J.D./M.B.A.
LICENSED IN KENTUCKY, OHIO AND COLORADO

April 28, 2004

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: SouthEast Telephone, Inc. v. Kentucky ALLTEL, Inc.,
Case No. 2004-00093

Dear Mr. Dorman:

Please find enclosed for filing an original and ten (10) copies of SouthEast Telephone's Response to ALLTEL Motion to Dismiss and Motion to Show Case, for filing in the above-referenced case.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,



Jonathon N. Amlung

Enclosures

cc: Parties of record

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC.)
Complainant)
v.)
KENTUCKY ALLTEL, INC.)
Respondent)

Case No. 2004-00093

SOUTHEAST TELEPHONE RESPONSE
TO ALLTEL MOTION TO DISMISS
AND MOTION TO SHOW CAUSE

COMES NOW SouthEast Telephone, Inc. ("SouthEast") and hereby objects to the Motion to Dismiss filed by Kentucky ALLTEL, Inc. ("ALLTEL") filed herein.

PROCEDURAL AND FACTUAL HISTORY

As this Commission is painfully aware, SouthEast has been trying to interconnect with ALLTEL's facilities since as early as April 3, 2002. On that date, SouthEast first contacted Jimmy Dolan of ALLTEL to begin negotiations on an interconnection agreement. More than two years later, nothing has changed. ALLTEL continues to refuse to process *any* orders from SouthEast, whether for UNE-P or for resale lines, despite its clear legal obligation to do so.

SouthEast filed the underlying case to this matter, Case Number 2003-00115, on March 24, 2003. Since that time, ALLTEL has filed countless petitions with this Commission to avoid its legal obligations to provide interconnection to SouthEast. ALLTEL also had the mendacity to make baseless accusations against Commission Staff and Counsel for SouthEast of ethical and legal violations.

Following the Arbitration hearing in Case Number 2003-00115, the Commission rendered its decision resolving the disputes between the parties and ordering the parties to file an interconnection agreement within thirty (30) days of December 19, 2003, the date of the Order. ALLTEL refused, citing several problems that were not resolved in the December 19, 2003, Order.

The parties briefed those remaining issues, and the Commission resolved them on February 6, 2004, directing the parties to file their interconnection agreement by February 16, 2004. ALLTEL again refused, and filed a motion for reconsideration.

The Commission denied that motion on March 5, 2004. ALLTEL finally filed the interconnection agreement on March 16, 2004, but refused to process any orders for service placed by SouthEast.

ALLTEL appealed the underlying case to the United States District Court for the Eastern District of Kentucky, and filed motions for a temporary restraining order and a preliminary injunction against SouthEast and the Commission. Both motions were denied by the Federal Court. ALLTEL has refused and continues to refuse to process any of SouthEast's orders for service under the parties' interconnection agreement. A timeline of the SouthEast ordering process is attached hereto for the Commission's review.

It should be noted that ALLTEL's refusal to process SouthEast's orders is not coming from a low-level minion unaware of the procedural history of this case; rather, ALLTEL's refusal is coming directly from Steve Rowell, the Senior Vice President for State Government Affairs for ALLTEL, who is also an attorney. This fact alone highlights the shocking nature of the procedural history in this case.

OBJECTION TO MOTION TO DISMISS

Once again, ALLTEL is bombarding this Commission with motions in an attempt to delay what SouthEast hopes is an inevitable realization that ALLTEL has an obligation to process SouthEast orders for UNE-P access and resale lines. SouthEast objects to the motion to dismiss, and requests this Commission to overrule it accordingly.

ALLTEL relies primarily on the misplaced proposition that it has filed an action in the U.S. District Court to overturn this Commission's decision in Case Number 2003-00115. As stated herein, Judge Hood of the U.S. District Court overruled each of ALLTEL's motions seeking to enjoin this Commission from enforcing the interconnection agreement. It should be obvious that the mere fact that an appeal has been filed does not automatically invalidate the interconnection agreement, nor does it enjoin this Commission from enforcing the terms of that document. ALLTEL has cited no authority supporting this proposition, as none exists. In fact, there is ample support in both statutory and case law supporting the validity and enforceability of the Commission's decisions regardless of whether an appeal has been filed.

KRS 278.390 reads, in pertinent part:

Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

In Commonwealth v. South Central Bell Telephone Co., Ky., 545 S.W.2d 927 (1976), the Kentucky Supreme Court aptly described the application of KRS 278.390:

It is as obvious as the acropolis of Athens that an order of the commission continues in force until revoked or modified by the commission...

(Id. at 931)

ALLTEL's only recourse to enjoin enforcement of the interconnection agreement was to seek an Order from the Federal Court, and it was appropriately denied that remedy.

ALLTEL also relies on the proposition that it no longer needs to supply UNE-P under the D.C. Circuit's decision in United States Telecom Ass'n v. Federal Communications Comm'n, Docket No. 00-1012 (D.C. Cir., March 2, 2004). ALLTEL has presented this argument previously to this Commission, and this Commission appropriately rejected that argument.

As this Commission noted in its Order of March 5, 2004 in the underlying case:

We are, with respect to the mass market UNE-P question, returned to the legal environment that existed prior to entry of the TRO. Nothing in that legal environment is contrary to our Orders in this case. Based on the foregoing analysis, we affirm our previous Orders in this matter. We also have reviewed the parties' agreement, and conclude that no portion of the agreement discriminates against a telecommunications carrier not party to it. We also find that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

(Id. at 2, 3)

Despite the D.C. Circuit's recent opinion, ALLTEL continues to carry the obligation to provide UNE-P to SouthEast under the valid interconnection agreement that was filed by ALLTEL and approved by this Commission.

What ALLTEL has not tried to explain is why it continues to refuse to process orders for *both* UNE-P *and* resale lines. SouthEast has placed many orders for both, but ALLTEL continues to refuse to acknowledge either type of order.

MOTION TO SHOW CAUSE

ALLTEL is blatantly refusing to follow this Commission's lawful orders. In light of the time-sensitive nature of this matter, and ALLTEL's outrageous conduct, SouthEast

requests this Commission to enter an Order requiring ALLTEL, on an expedited basis, to show cause why it should not be subject to immediate fines and penalties for its willful failure to comply with Commission Orders.

CONCLUSION

Access to UNE-P has long been a means for competition to emerge in monopoly markets controlled by companies such as ALLTEL. It has created thousands of jobs across the United States, and it has ensured consumers have access to affordable telephone service. For over two years, SouthEast has been trying to offer service to consumers in ALLTEL territory, only to be thwarted time and time again by ALLTEL's impudent refusal to comply with its legal obligations. In the meantime, SouthEast has incurred damages and so have its potential consumers in ALLTEL territory.

ALLTEL's motion to dismiss should be overruled, and this Commission should compel ALLTEL to show cause why it is not subject to immediate fines and other penalties as requested by SouthEast in this case.

Respectfully submitted,

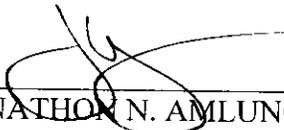


JONATHON N. AMDUNG
Attorney for SouthEast Telephone, Inc.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, KY 40202
Telephone (502) 587-6838
Facsimile (502) 584-0439

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing was mailed, this the 28th day of April, 2004, to:

James H. Newberry, Jr.
Noelle Holladay
WYATT, TARRANT & COMBS, LLP
250 W. Main Street, Suite 1600
Lexington, KY 40507-1746



JONATHON N. AMLUNG

ALLTEL TimeLine
(Post-Arbitration)

- 03/24/04 Brad Hall called Jimmy Dolan - left a voice mail inquiring about the status of our ALLTEL Express account and password. He also informed Mr. Dolan that we wanted to place a residential resale order today (4/24) and requested that Mr. Dolan return his call.
- 03/25/04 Liz Thacker called Mr. Dolan - left a voice mail message inquiring about the status of our ALLTEL Express account. She also informed Mr. Dolan of SET's intent to place a residential resale order immediately and requested that Mr. Dolan return her call on 4/25.
- 03/29/04 Brad Hall called Jimmy Dolan - left a voice mail requesting the ability to place a resale order. Again, Brad requested he return his no call. No response has been received either by phone or email from anyone at Alltel.
- 04/05/04 Brad Hall called Jimmy Dolan - left a voice mail requesting the ability to place a resale or UNE order. Also, Brad requested that we be provided with an account and access to Alltel Express for ordering as originally requested on March 12, 2004. Again, Brad requested Jimmy return his phone call.
- 04/07/04 Karen called Jimmy Dolan - left a voice mail requesting the ability to place a resale or UNE order. In addition, Karen requested that our accounts be set up as requested on March 12, 2004. Karen also requested that we be able to place these orders manually if they were unable to comply with electronic orders.
- 04/08/04 Karen again called Jimmy Dolan - left a voice mail requesting the ability to place a resale or UNE order. In addition, Karen requested that our accounts be set up as requested on March 12, 2004. Karen also requested that we be able to place these orders manually if they were

Hatfield.”